

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

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*NOT A MEMBER OF D.C. BAR
*ALSO ADMITTED IN NEW YORK
*ALSO ADMITTED IN OHIO
*ALSO ADMITTED IN MARYLAND

RECORDATION NO. *6649* Filed & Recorded

MAY 13 1987 12-20 PM

INTERSTATE COMMERCE COMMISSION

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440367 A AND A

May 13, 1987

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) is a copy of Order No. 809 of the United States District Court for the Northern District of Illinois in Case No 77 B 8999, In Re: Chicago, Milwaukee, St. Paul & Pacific Railroad Company, which has been certified by the Clerk of the Court, together with two photocopies thereof.

Said Order, a secondary document, relates, among other things, to the following duly filed and recorded documents:

1. General Mortgage dated as of January 1, 1944 between Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("MILW"), Mortgagor, and Harris Trust and Savings Bank, Indenture Trustee, Mortgagee (Recordation Number 6648, recorded on June 30, 1972).

2. First Mortgage dated as of January 1, 1944 between MILW, Mortgagor, and Continental Illinois National Bank and Trust Company of Chicago, Indenture Trustee, Mortgagee (Recordation Number 6649, recorded on June 30, 1972).

The enclosed Order provides, among other things, for the release of liens, security interests, claims and encumbrances on certain rail assets conveyed by Richard B. Ogilvie, as Trustee of the property of MILW, to Soo Line Railroad Company and SLRCO, Inc.

C. T. Kappler

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
May 13, 1987
Page Two

Also enclosed is a check in the amount of \$
payable to the order of the Interstate Commerce Commission
covering the required recordation fee.

Kindly return a stamped copy of the enclosed document
to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth
Street, N.W., Washington, D.C. 20006.

Very truly yours,

Charles T. Kappler

CTK/hs

Enclosures

United States District Court

Northern District of Illinois

Eastern Division

RECORDATION NO.

6649-J Filed & Recorded

MAY 13 1987 12-2 0 PM

INTERSTATE COMMERCE COMMISSION

I, H. Stuart Cunningham, Clerk of the United States District Court for the Northern District of Illinois, do hereby attest and certify that the annexed document is ~~documents are~~ a full, true, and correct copy of the original(s) on file in my office and in my legal custody.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois on 5/6/87.

H. STUART CUNNINGHAM

CLERK

By:

Anthony J. Franco

Deputy Clerk


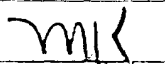
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

| | | | |
|------------------------|--|--|---------------|
| Case Number | 77 B 8999 | Date | FEB. 19, 1985 |
| Name of Assigned Judge | THOMAS R. McMILLEN | Sitting Judge if Other Than Assigned Judge | |
| Case Title | In Re: Chicago, Milwaukee, St. Paul & Pacific RR Co. | | |

MOTION: (In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented.)

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DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

| | | | | |
|---|--|--|-----------------------|------------|
| (1) <input checked="" type="checkbox"/> | Judgment is entered as follows: | (2) <input type="checkbox"/> | [Other docket entry:] | |
| Enter order #809: that the sale and assignment to Soo and SLRGO, in accordance with the APA and this order, of the Trustee's right, title and interest in the Rail Assets are approved and confirmed in all respects. | | | | |
| (3) <input type="checkbox"/> | Filed motion of [use listing in "MOTION" box above]. | | | |
| (4) <input type="checkbox"/> | Brief in support of motion due _____ | | | |
| (5) <input type="checkbox"/> | Answer brief to motion due _____ Reply to answer brief due _____ | | | |
| (6) <input type="checkbox"/> | <input type="checkbox"/> Hearing on _____ set for _____ at _____ | | | |
| (6) <input type="checkbox"/> | <input type="checkbox"/> Ruling _____ | | | |
| (7) <input type="checkbox"/> | Status hearing <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____ | | | |
| (8) <input type="checkbox"/> | Pretrial conference <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____ | | | |
| (9) <input type="checkbox"/> | Trial <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____ | | | |
| (10) <input type="checkbox"/> | <input type="checkbox"/> Trial <input type="checkbox"/> Hearing held and continued to _____ at _____ | | | |
| (11) <input type="checkbox"/> | This case is dismissed <input type="checkbox"/> without <input type="checkbox"/> with prejudice and without costs <input type="checkbox"/> by agreement <input type="checkbox"/> pursuant to <input type="checkbox"/> FRCP 41(j) (failure to serve) <input type="checkbox"/> General Rule 21 (want of prosecution) <input type="checkbox"/> FRCP 41(a)(1) <input type="checkbox"/> FRCP 41(a)(2) | | | |
| (12) <input checked="" type="checkbox"/> | DRAFT [For further detail see order <input type="checkbox"/> on the reverse of <input checked="" type="checkbox"/> attached to the original minute order form.] | | | |
| <input type="checkbox"/> | No notices required. | <div style="text-align: center;"> FEB 20 1985 FEB 20 1985 FEB 20 1985 </div> | number of notices | Document # |
| <input type="checkbox"/> | Notices mailed by judge's staff | | date typed envelopes | |
| <input type="checkbox"/> | Notified counsel by telephone | | date docketed | |
| <input checked="" type="checkbox"/> | Docketing to mail notices | | date mld notices | |
| <input checked="" type="checkbox"/> | Mail CIV-31 form | | mailing dpty initials | |
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| | | Date/time received in central Clerk's Office | | |

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|-------------------------------|---|---------------------------|
| In the Matter of |) | |
| |) | |
| CHICAGO, MILWAUKEE, ST. PAUL |) | In Proceedings for |
| AND PACIFIC RAILROAD COMPANY, |) | the Reorganization of |
| |) | a Railroad |
| |) | |
| Debtor. |) | No. 77 B 8999 |
| |) | Thomas R. McMillen, Judge |

ORDER NO. 809

Upon consideration of the matter of the sale, pursuant to Sections 4 and 5(b) of the Milwaukee Railroad Restructuring Act ("MRRA"), notice having been given to all parties, of the Rail Assets, as defined in and pursuant to an Asset Purchase Agreement dated April 6, 1984, as amended (the "APA"), to be entered into between Richard B. Ogilvie, not personally, but solely as trustee ("Trustee") of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("Milwaukee") and the Soo Line Railroad Company, a Minnesota corporation ("Soo"), and SLRCO, Inc., a Minnesota corporation ("SLRCO"), the Court, acting as the Court of Reorganization for the Milwaukee pursuant to Section 77 of the Bankruptcy Act of 1898 and pursuant to Section 4 and Section 5(b) of the MRRA finds and concludes as follows:

1. Soo and SLRCO filed an application with the Interstate Commerce Commission (the "Commission") seeking approval of a purchase of the Rail Assets. In addition, Chicago and North Western Transportation Company ("CNW") filed its application seeking the purchase of essentially similar assets.

2. The Commission rendered its decision on September 26, 1984 with respect to the application of Soo and SLRCO to purchase the assets specified in the APA. That decision, inter alia, approved the application pursuant to Section 11344(b) of the Interstate Commerce Act, Section 5(b) of the MRRA, and Section 77 of the Bankruptcy Act of 1898. The Commission served its further decision with respect to CNW's modified application on January 11, 1985, which decision incorporated certain portions of its September 26, 1984 decision.

3. The Court has ^{considered} ~~heard~~ the evidence adduced, ^{heard} ~~the~~ arguments of counsel, and the oral and written applications of various parties in interest seeking review of and commenting upon the Commission's September 26, 1984 and January 11, 1985 decisions, including those of the Trustee, Burlington Northern Railroad Company, Chicago Milwaukee Corporation, Escanaba and Lake Superior Railroad Company, First National Bank of Chicago (as Indenture Trustee), Grand Trunk Corporation, Bruce E. Hendry and Mobil Oil Corporation, the

Commission, LaSalle National Bank (as Successor Corporate Trustee), the City of Milwaukee, Wisconsin, CNW, the Chicago, Milwaukee, St. Paul and Pacific Railroad Bond and Debenture Holders Protective Committee (the "Protective Committee"), Railway Labor Executives' Association, Soo, States of Iowa, Minnesota and Wisconsin Departments of Transportation, the United States, United Transportation Union Local No. 528, Wisconsin Power and Light Company, Green Hills Regional Planning Commission, North Dakota Public Service Commission, Seaboard System Railroad, Inc., Harold E. Spencer, Peter N. Todhunter and Richard James Stevens, State of Missouri, South Dakota Department of Transportation, Coalition to Save The Milwaukee and "Certain Employees for the Milwaukee".

4. Section 5(b)(2) of the MRRA empowers this Court to review the order of the Commission entered under that Section only under Sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5 of the United States Code. The Commission has certified to this Court the full record of proceedings before it in connection with the decision of September 26, 1984 and the decision of January 11, 1985. The Court has considered and reviewed the findings and decisions of the Commission filed with this Court, pursuant to the requirements of those sections. The Court has further considered the allegations of error contained in

the petitions for review and comments and has found that the Commission's findings and decisions should be and are approved by this Court, since the findings and decisions were in accordance with law and were not arbitrary, capricious, an abuse of discretion, contrary to constitutional right, power, privilege or immunity, in excess of statutory jurisdiction, authority or limitations, short of statutory right, or without observance of procedure required by law.

5. The Court has ^{considered} ~~heard~~ the evidence adduced, ^{heard} ~~the~~ arguments of counsel, and the oral and written arguments of various parties in interest expressing a preference for or objecting to the approval of the sale to either the Soo and SLRCO or CNW, including those of the Trustee, Burlington Northern Railroad Company, Chicago Milwaukee Corporation, Escanaba and Lake Superior Railroad Company, First National Bank of Chicago (as Indenture Trustee), Grand Trunk Corporation, Bruce E. Hendry and the Mobil Oil Corporation, LaSalle National Bank (as Successor Corporate Trustee), the City of Milwaukee, Wisconsin, North Dakota Public Service Commission, CNW, the Protective Committee, Railway Labor Executives' Association, Soo, States of Iowa, Minnesota and Wisconsin Departments of Transportation, Stickney Corporation, the United States, United Transportation Union Local No. 528, Wisconsin Power and Light Company, Green Hills Regional Planning Commission, Seaboard System Railroad,

Inc., State of Missouri, South Dakota Department of Transportation, Coalition to Save The Milwaukee and "Certain Employees of the Milwaukee". The Court has considered the Commission's findings with respect to the public interest, the Commission's vote and basis for its preference for the Soo and SLRCO over CNW, the consideration to be paid to the Debtor's estate, the amount of wages to be paid to employees and other relevant matters. The prompt sale of the Rail Assets to Soo and SLRCO for the continued provision of common carrier service in return for the consideration specified in the APA (including the assumption of certain liabilities of the Milwaukee's estate) is in the best interest of the Milwaukee's estate and of ultimate reorganization of the Milwaukee, and is consistent with the public interest. ~~Soo and SLRCO are bona fide purchasers within the meaning of Rule 8-703 of the Bankruptcy Rules of the Supreme Court of the United States.~~

6. The immediate execution by the Trustee of the APA, and the prompt closing of the transactions in the manner and time contemplated by the APA, are in the best interests of the Milwaukee's estate.

7. The Trustee has issued certain Trustee Certificates during the course of these proceedings which were purchased by the United States Department of Transportation ("DOT") and the Federal Financing Bank pursuant to Sections

505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 and Section 7 of the MRRRA. The estate also is liable to the DOT under the terms of its Series I Redeemable Preference Shares issued in 1977 prior to the Milwaukee's filing for reorganization. The Trustee's obligations under the above Trustee Certificates and under the Preference Shares ~~may~~^{will} be assumed at closing by Soo and SLRCO JML in the manner provided in the APA.

8. The purchase of the Rail Assets together with prior purchases approved by this Court constitute the purchase of substantially all of the Milwaukee Railroad for purposes of Section 7(h)(1)(B) of the MRRRA (as amended by Section 701(c)(1) of the Staggers Rail Act of 1980), 45 USC §906(h)(1)(B), and all obligations to the United States or any agency or instrumentality of the United States incurred pursuant to Section 7 of the MRRRA by the Milwaukee or the Trustee, including Trustee Certificates 1980 A and B are waived and cancelled.

9. The sale of the Rail Assets and the assignment and assumption of the trackage agreements, joint facilities and operating rights over segments of the rail properties now operated by the Trustee are in the public interest (as determined by the Commission and affirmed by this Court) and are in the best interest of the estate as

found by this Court. The assignment and assumption of the trackage agreements, interests in or agreements with respect to joint facilities, leases, operating rights and all other rights and interests of the Trustee being assigned pursuant to the APA will not effect a termination of the Trustee's rights and interests under the contracts, leases and agreements granting those rights and interests, and those rights and interests are ~~fully~~ assignable to Soo and SLRCO in accordance with the terms of the APA, and notwithstanding any provisions in any such contracts, leases or agreements to the contrary. *from*

10. Section 5 of the MRRRA mandates that the Court require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under Section 11347 of title 49 of the United States Code. In prior sales of lines of railroad pursuant to Section 5, the Court imposed "Appendix B Conditions" (report of the Special Master dated February 20, 1980) which were found to be as protective as statutorily required and consistent with both the scheme and language of the MRRRA by the Court of Appeals for the Seventh Circuit in Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Consolidated Appeals of Railway Labor Executives' Association, 658 F.2d 1149 (7th Cir. Aug. 17, 1981), cert. den. 455 U.S. 1000 (Mar. 8, 1982).

11. Section 5 of the MRRRA does not require that labor protective conditions be imposed with respect to employees of The Milwaukee Motor Transportation Company, and the Court finds that such conditions ~~are unnecessary~~ ^{should not be imposed.} *then*

12. The additional findings and conclusions of law, not inconsistent with the provisions of this Order, made pursuant to Rule 52 by the Court orally on February 8, 1985, are incorporated in this Order by reference and made a part of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That the sale and assignment to Soo and SLRCO, in accordance with the APA and this Order, of the Trustee's right, title and interest in the Rail Assets are approved and confirmed in all respects. The Rail Assets shall, upon conveyance, be free and clear of all liens, security interests, claims and encumbrances, of whatever nature, whenever arising, including without limitation those arising from federal, state and local tax claims or liens, those arising from that certain First Mortgage dated as of January 1, 1944 with Continental Illinois National Bank and Trust Company of Chicago, Indenture Trustee, and the General Mortgage dated as of January 1, 1944 with Harris Trust and Savings Bank, Indenture Trustee, and all mortgages supplemental thereto, except only liens, security interests,

claims and encumbrances created by, or specifically permitted to remain on the Rail Assets pursuant to, the APA.

2. That the Trustee is authorized and directed to execute promptly and deliver to Soo and SLRCO the APA, to consummate promptly the sale as set forth in the APA and to execute and deliver on or as soon as practicable after the Closing Date (as defined in the APA), all deeds, bills of sale, assignments, certificates of title, and other documents, and to take such other actions, as shall be required or appropriate to effectuate the transactions contemplated by the APA, including to the extent necessary under the circumstances as determined by the Trustee, modifications to the APA or the transaction required to result in a fully taxable transaction, so that for federal income tax purposes gain or loss will be fully recognized by the Milwaukee on the consummation of the sale, and that the net operating loss carry forwards and tax credits available to the Milwaukee immediately prior to the closing of the sale will be preserved to the Milwaukee.

3. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate, all of his rights under contracts as provided by the APA.

4. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate and in accordance with the APA, all of the trackage agreements, joint facili-

ties and operating rights necessary for Soo or SLRCO, as the case may be, to operate the Railroad (as defined in the APA).

5. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate, all labor contracts (including collective bargaining agreements) with respect to employees of the Trustee required by the APA to be offered employment by Soo or SLRCO.

6. That Soo and SLRCO, or either of them, assume each of the obligations and liabilities arising under the contracts or agreements assigned by the Trustee in accordance with paragraphs 3, 4 and 5 of this Order. In addition, Soo and SLRCO, or either of them, shall assume the Trustee's obligations under the Wage Deferral Agreement and the last two sentences of Paragraph 2b of the Wage Reduction Agreement, as specified in the APA as modified in the December 4, 1984 letter agreement between the Soo and the Trustee, the obligations of the Trustee under the Trustee Certificates issued to DOT and the Federal Financing Bank pursuant to Sections 505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 or Section 7 of the MRRA (excluding Trustee Certificates 1980 A and B), the obligations with respect to the Series I Redeemable Preference Shares, the obligations of the Trustee with respect to any labor conditions imposed with respect to the transactions contemplated by the APA and other obligations and liabilities

of the Trustee to be assumed by Soo and SLRCO, or either of them, pursuant to the APA. After the Closing (as defined in the APA), all obligations and liabilities of the Trustee to be assumed by Soo or SLRCO in accordance with this Order or the APA and not otherwise discharged shall be the sole obligation of Soo or SLRCO, or both, as the case may be, and the Trustee and the Milwaukee shall be relieved from any and all liabilities in connection with or arising out of such obligations except as expressly may be provided otherwise by the APA, whether occurring after the Closing or arising out of the conveyance or assignment; provided, however, the foregoing shall not impose on Soo or SLRCO any liability or obligation not imposed upon or assumed by them in accordance with the terms of the APA.

7. That all prepetition obligations and debts of the Trustee and Debtor and its subsidiaries to Soo and its subsidiaries are cancelled. In addition, all outstanding debts and obligations of the Trustee and Debtor and any of its subsidiaries arising out of facilities embargoed or abandoned prior to Closing are cancelled.

8. That the sale, transfer and assignment of the Rail Assets is without warranties, representations or guaranties of any kind, expressed or implied, except as specifically stated in the APA.

9. That upon consummation of the transactions contemplated by the APA, all common carrier obligations of the Trustee and Debtor be assumed by Soo and SLRCO, and shall cease as to the Trustee and Debtor.

10. Subject to the agreement of Soo and SLRCO with representatives of employees to labor protection conditions at least as protective as those specified below, the conditions contained in Appendix B to the Report of the Special Master dated February 20, 1980 are adopted for the protection of employees of Soo and Milwaukee Road affected by the transactions contemplated by the APA; Section 4(e) is included therein as specified in Order No. 276B; Appendix B is also modified as provided in Order No. 409A. Notwithstanding the foregoing, no labor protective conditions are imposed with respect to the employees of The Milwaukee Motor Transportation Company.

11. That the Court shall retain jurisdiction over this matter for the purpose of implementing and carrying out the APA and resolving any disputes arising under or with respect to the APA, this Order or the Closing. The ICC shall have such continuing jurisdiction over this transaction as is by law vested in it.

12. That the rights, claims, liens and interests of any creditor of, or claimant against, the Debtor's estate which are not assumed by Soo or SLRCO in accordance with

this Order or adjudicated by this Order as applying to the Rail Assets which are sold, transferred or assigned pursuant to this Order shall be, upon the Closing, transferred from the Rail Assets to the net proceeds of the sale; such net proceeds shall, until further order of this Court, be deposited and retained in the existing trust account bearing the designation "Escrow Agent Account" No. 13-01043-4 at the Continental Illinois National Bank and Trust Company of Chicago and shall be invested pursuant to this Court's Order No. 536 in accordance with instructions from the Trustee or a person designated by him.

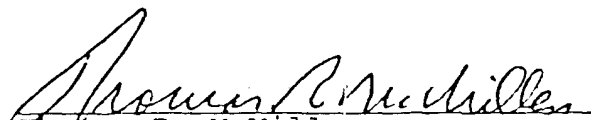
13. That following the closing of the sale and pending the earlier of (i) further order of this Court, (ii) the date on which this Order authorizing the sale shall not have been reversed and no further appeal may be taken by any party or (iii) 90 days after the Closing Date, Soo and SLRCO are directed to conduct the operations of the Railroad, (as defined in the APA), and to maintain the Rail Assets, subject to additions and dispositions in the ordinary course, on a basis reasonably designed to account for the operations of the Railroad and the identification of the Rail Assets subsequent to their transfer to Soo and SLRCO.

14. All requests for relief pertaining to the subject matter of this Order not otherwise granted by this Order shall be considered denied.

15. Directions contained in this Order shall be carried out forthwith.

Dated:

ENTER


Thomas R. McMillen
United States District Judge

Feb. 19, 1985

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5/83)

JUDGMENT IN A CIVIL CASE

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|---|--|
| United States District Court | DISTRICT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION |
| CASE TITLE IN THE MATTER OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Debtor | DOCKET NUMBER 77 B 8999 NAME OF JUDGE OR CLERK THOMAS R. MC MILLEN |

☐ Jury Verdict. This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to ~~trial~~ hearing before the Court with the judge (~~magistrate~~) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

the sale and assignment to Soo and SLRCO, in accordance with the APA and this order, of the Trustee's right, title and interest in the Rail Assets are approved and confirmed in all respects.

| | |
|--------------------------------------|-----------------------|
| STUART CUNNINGHAM | DATE Feb. 19, 1985 |
| PUTY CLERK <i>Kathleen Branch</i> | |